



Physicians Caring for Texans

April 2, 2021

Office of the Chief Clerk
MC 112-2A
Texas Department of Insurance
PO Box 149104
Austin, Texas 78714-9104
Submitted via email to: ChiefClerk@tdi.texas.gov

RE: Proposed Rules Regarding Mental Health and Substance Use Disorder Parity

To Whom it May Concern:

On behalf of our more than 55,000 physician and medical student members, the Texas Medical Association (TMA) is writing to express our general support for the Texas Department of Insurance's (TDI's) [proposed rule](#) implementing HB 10, 85th Legislature, 2017. TMA strongly [supported](#) passage of this bill since it provides benefits and coverage for mental health conditions and substance use disorders under the same terms and conditions applicable to a plan's medical and surgical benefits and coverage. This bill is consistent with TMA policy on mental health equitable treatment and parity, which specifically supports "mental health equitable treatment (parity) of health insurance coverage for psychiatric brain disease and malfunction (mental illness including substance abuse/chemical dependency) equal to that for other medical conditions."

TMA is encouraged that TDI estimates this final rule could be adopted as early as March 21, 2021. Once finalized, TMA is pleased TDI will begin to prohibit Texas health insurers from imposing quantitative or nonquantitative treatment limitations on benefits for a mental health condition or substance use disorder that are generally more restrictive than the limitations imposed on coverage of benefits for medical or surgical expenses. Furthermore, we support the proposal to change subchapter name from "Mental Health Parity" to "Mental Health and Substance Use Disorder Parity."

TMA is concerned with theoretical possibilities that a plan could exclude or restrict:

- All benefits for both medical/surgical and mental health/substance use disorder treatments that result from the illegal use of a controlled substance. Substance use disorder is a recognized clinical diagnosis, so it is a Catch-22 to establish treatment parity, but then also have provisions allowing a plan to deny treatment stemming from that very diagnosis if the abused substance is illegal.
- Autism coverage for people diagnosed at age 10 or older.
- Coverage for mental health treatment in certain types of facilities.
- Changes to the plan benefit intended to circumnavigate the intent of HB 10.

As such, we strongly encourage TDI to carefully monitor and discourage such changes in insurance to ensure access to high quality care for all Texans.

Furthermore, TMA supports the proposals found:

- In Section 21.2414 that prohibits a plan from denying benefits it would otherwise provide, if the injury was the result of domestic violence or a medical condition, including both physical and mental health conditions, even if the medical condition was not diagnosed before the injury.
- Throughout the rule that require regularly reported data from plans including the requirement in Section 21.2424 which requires an issuer to provide issuer information and details on market type, plan type, number of policies for which data is reported, number of covered lives, and premium volume.

Regarding plans that provide coverage for autism spectrum disorder, TMA objects to the current draft of proposed Section 21.2453 to the extent that it does not fully capture existing law in Insurance Code Section 1355.015(b). We are specifically concerned that, as written, it omits the required involvement of the primary care physician. Insurance Code Section 1355.015 (b) states:

(b) The health benefit plan must provide coverage under this section to the enrollee for all generally recognized services **prescribed** in relation to autism spectrum disorder **by the enrollee's primary care physician in the treatment plan recommended by that physician.** **An individual providing treatment prescribed under this subsection must be:**

(1) **a health care practitioner:**

(A) who is licensed, certified, or registered by an appropriate agency of this state;

(B) whose professional credential is recognized and accepted by an appropriate agency of the United States; or

(C) who is certified as a provider under the TRICARE military health system; or

(2) **an individual acting under the supervision of a health care practitioner described by Subdivision (1).**

As demonstrated by the bolded and underlined language, there are two requirements governing coverage for the performance of generally recognized services: (1) the services must be prescribed by the enrollee's primary care physician in the treatment plan recommended by that physician, *and* (2) the individual providing such prescribed treatment must be a qualified health care practitioner or an individual acting under the supervision of a qualified health care practitioner as defined by subsection (b)(1)-(2).

The proposed language in Section 21.2453 appears to only address the requirements of subsection (b)(1)-(2):

§21.2453.Coverage for Applied Behavior Analysis.

A health benefit plan issuer may not deny coverage for services or benefits for autism spectrum disorder on the basis that a provider of applied behavior analysis does not hold a license issued by an agency of this state, **as long the provider otherwise meets one of the requirements of Insurance Code §1355.015(b),** concerning Required Coverage for Certain Enrollees.

This could unintentionally be interpreted to remove the important role of the primary care physician. Thus, for precision and to avoid improper interpretations and applications of the law, TMA asks that the language in proposed Section 21.2453 be amended to state:

§21.2453.Coverage for Applied Behavior Analysis.

A health benefit plan issuer may not deny coverage for services or benefits for autism spectrum disorder on the basis that a provider of applied behavior analysis does not hold a license issued by an agency of this state, as long the provider is **providing treatment prescribed by the enrollee's primary care physician in the treatment plan recommended by that physician and otherwise meets one of the requirements of Insurance Code §1355.015(b)**, concerning Required Coverage for Certain Enrollees.

TMA appreciates that TDI is assisting health insurers comply with these requirements by issuing a template that issuers can use to perform the necessary analysis for compliance. Using a standardized and TDI-approved template will promote compliance. For plans that use their own methods, TMA urges TDI to carefully examine plans' methodologies to ensure they are correct and in compliance.

Thank you for the opportunity to provide these comments. If you have any questions, please do not hesitate to contact Helen Kent Davis, associate vice president for governmental affairs, at helen.davis@texmed.org or Laura Thetford, associate general counsel, at laura.thetford@texmed.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Diana L. Fite, MD". The signature is fluid and cursive, with a large loop at the beginning and a distinct "MD" at the end.

Diana L. Fite, MD
President
Texas Medical Association